

Remarks

Claims 1 and 3-6 are in this case. Claim 1 has been amended to remove the negative limitation "with the proviso that when X is H, Y is not C₁-C₄ alkyl" and X has been redefined as only F. Claim 2 has been canceled since it no longer limits Claim 1 and Claim 3 has been amended to refer to Claim 1 rather than the canceled Claim 2.

Claims 1-6 were rejected under 35 U.S.C. § 112, first paragraph because they contained a negative limitation that did not have any basis in the original disclosure. This rejection is inappropriate for independent claims 5 and 6 which never contained this negative limitation. Claim 1 has been amended to remove the negative limitation. Claim 1 has instead been positively amended to accomplish the same objective by redefining X to represent only F. With these amendments, Claim 1, and Claims 3 and 4 which depend on Claim 1, are in compliance with the requirements of 35 U.S.C. § 112, first paragraph.

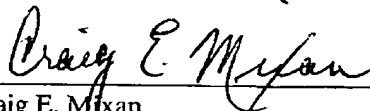
Claims 1-6 have been rejected on the grounds of nonstatutory obviousness-type double patenting over U.S. Patent 6,352,635 (Krummel *et al.*). In addition to compounds in which X = Cl or Br (starting materials), Krummel *et al.* disclose compounds in which X = H (products). Krummel *et al.* does not claim these compounds but rather the method of making one from another. Claim 1 has now been limited to those compounds in which X = F. Krummel *et al.* does not disclose or suggest such materials because it is not possible to prepare the products (X = H) by the claimed process from a starting material in which X = F. Thus the compounds of Claim 1 in which X = F are not obvious from Krummel *et al.* Furthermore, the compounds of Claim 1 in which X = F are patentably distinct from the products of the process of Krummel *et al.* in which X = H. The affidavit under 37 C.F.R. § 1.132 by Mr. Paul Schmitzer provided with Response C dated May 3, 2005 shows the unexpected efficacy of compounds in which X = F compared to both those in which X = H or Cl. Thus the claims of the present invention are patentably distinct from Krummel *et al.*

Claims 1-6 have been rejected under 35 U.S.C. § 102(e) as anticipated by Krummel *et al.* As remarked above, Krummel *et al.* does not anticipate Claim 1, nor Claims 3 and 4 which depend upon Claim 1, because they neither disclose nor suggest compounds in which $X = F$. In addition, Krummel *et al.* does not disclose the herbicidal compositions and use of the compounds of Claims 5 and 6 in which $X = H$ or F and $Y = C_1-C_4$ alkyl. Thus, the claims of the present invention fulfill the requirements of 35 U.S.C. § 102.

In light of the present amendment and previous remarks, Claims 1 and 3-6 should now be in condition for allowance.

Reconsideration of this application and its early allowance are respectfully requested.

Respectfully submitted,



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